

MEETING MINUTES, BOARD OF ZONING APPEALS, AUGUST 14, 2006

Present: Phil Tinkle, Ken Knartzer, Mike Campbell, Shan Rutherford, Raynel Berry, Asst. City Attorney; Ed Ferguson, Planning Director; and Janice Nix, Recording Secretary

The meeting was called to order at 6:00 p.m. by Phil Tinkle, Chairman.

PREVIOUS MINUTES

July 10th – Rutherford moved to approve the minutes, seconded by Knartzer. Vote for **approval** was unanimous, 4-0. **Motion carried.**

FINDINGS OF FACT

V2006-008 – Dimensional Variance – 2335 Harvest Moon Drive - Knartzer moved that in consideration of the statutory criteria that the Board adopt the written Findings of Fact, incorporating the staff report and the evidence submitted into the record, as our final decision and final action for Variance Petition Number V2006-008, seconded by Rutherford. Vote for **approval** was unanimous, 4-0. **Motion carried.**

NEW BUSINESS

Docket V2006-009 – Sign Code Variance – 484 N. Madison Ave, Mike Duncan Real Estate Group – request to erect a 5' x 10' ground sign in front of their business. The Sign Code restricts ground signs to a maximum of 4 feet in height. Applicant and Owner is Mike Duncan Real Estate Group.

Mike Duncan came forward, as did Janette Koon from the audience, and both were sworn in. Duncan explained he would like the 5' high sign in order to have a reader board at the bottom of the sign.

Statutory Criteria were addressed by the petitioner as follows:

1. **Criteria:** The approval will not be injurious to the public health, safety, morals, and general welfare of the community; **Answer:** The sign in size will be 5' x 10' and will be located 10 feet behind the current sidewalk and located in the front lawn of the property. This will not reduce the safety visibility of traffic, vehicular or pedestrian.
2. **Criteria:** The use and value of the area adjacent to the property included in the Variance will not be affected in a substantially adverse manner. **Answer:** Due to the setback of the sign and the distance between adjacent property it will not affect the use and value area adjacent to the property in a substantially adverse manner.
3. **Criteria:** The strict application of the terms of the Zoning Ordinance will result in practical difficulties in the use of the property. **Answer:** The current 4' x 8' sign limits the availability to use a reader board for advertising special opportunities to the general public. The current sign also limits the amount of information he could put on the reader board.

Janette Koon came forward. She presented photographs of Mr. Duncan's current sign and location of his proposed sign. She also had photos of signs on surrounding properties. She is opposed to the granting of the variance because she feels it is not within the standards and character that the merchants in Old Towne Greenwood are trying to establish and maintain. She also testified that the sign posts currently erected for the new sign are much taller than 5 feet in height.

Mr. Duncan came forward for rebuttal. He explained that the existing sign and posts are temporary. The existing sign is 4' x 8'. The proposed sign will be ground level with the top of the sign being 5' high.

There was discussion by the Board regarding statutory criteria #3. Knartzer and Rutherford both voiced concerns over whether or not practical difficulties would result from the use of the property if the variance were not granted. Tinkle asked Petitioner to elaborate further on how staying within the maximum 4' height requirement would pose practical difficulties in the use of the property for his business. He responded that he would like to be able to put more information on the proposed reader board than the current size standards would allow. Therefore, it would need to be a taller sign so that additional words with larger letters could be placed on the sign.

Tinkle stated that given the speed of traffic on Madison Avenue, and the placement of the sign, a larger sign would not necessarily be justified by the reasons presented by Petitioner. Rutherford concurred. Tinkle called for a Motion to submit the evidence into the record. Rutherford moved that the Board admit into the record all evidence presented in regard to this matter, including the notices, receipts, maps, photographs, written documents, Petitioner's application, Petitioner's Detailed Statement of Reasons, the Staff Report prepared by the Planning Department, certified copies of the Zoning Ordinance and Comprehensive Plan, testimony of the Petitioner, City planning staff and any Remonstrators, and all other exhibits presented, be they oral or written, for consideration by this Board in regard to this petition, seconded by Knartzer. Vote for **approval** was unanimous, 4-0. **Motion carried.**

Tinkle called for a motion on the petition. Rutherford moved to deny V2006-009, based upon statutory criteria #3, practical difficulties in the use of the property, not being met, seconded by Campbell. Vote for **approval** of the motion to **deny** V2006-09 was unanimous, 4-0. **Motion carried.**

Knartzer moved that having considered the statutory criteria that we direct the City Attorney's Office to draft written Findings of Fact, regarding the Board's decision denying Variance Petition Number V2006-009, said Findings to specifically incorporate the staff report and the evidence submitted into the record, for consideration and adoption by the Board of Zoning Appeals as our final decision and final action regarding this Petition at our next meeting, seconded by Campbell. Vote for **approval** was unanimous, 4-0. **Motion carried.**

Docket V2006-010 – Dimensional Variance – 801 N. U.S. 31, Taco Bell – requesting several site development variances as well as sign code variances for redevelopment of the restaurant. Applicant is Taco Bell of America; Owner is Simon Property Group LP.

A written request for continuance by Petitioner was submitted to the Planning Office. Petitioner's Notices listed August 28th, rather than August 14th, as the hearing date. Knartzer moved to continue V2006-010 to August 28, 2006, seconded by Campbell. Vote for **approval** of the **continuance** was unanimous, 4-0. **Motion carried.**

ANNOUNCEMENTS/REPORTS

Mr. Ferguson announced that the Visioning Workshop is this coming Thursday, August 17th @ 7:00 p.m.

Rutherford moved to adjourn, seconded by Knartzer. Vote for **approval** was unanimous, 4-0. **Motion carried.** Meeting was adjourned at 6:25 p.m.

JANICE NIX
Recording Secretary

PHIL TINKLE
Chairman